

# FHWA-FTA Fiscal Constraint Guidance

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## Statutory and Regulatory Background

For 40 years, Congress has directed that Federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Congress further refined and strengthened the planning process as the foundation for project decisions when it enacted **fiscal constraint provisions** in 1991 as part of the Intermodal Surface Transportation Efficiency Act (ISTEA). The fiscal constraint requirements apply to the metropolitan long-range transportation plan, metropolitan Transportation Improvement Program (TIP), and Statewide Transportation Improvement Program (STIP). These statutory requirements, first enacted by Congress in 1991 were clarified in FHWA/FTA statewide and metropolitan transportation planning regulations (23 CFR Part 450 and 49 CFR Part 613).

Fiscal constraint requires that revenues in transportation planning and programming (Federal, State, local, and private) are identified and "are reasonably expected to be available" to implement the metropolitan long range transportation plan and the STIP/TIP, while providing for the operation and maintenance of the existing highway and transit systems. In addition, revenues must be "available or committed" for the first two years of a TIP/STIP in air quality nonattainment and maintenance areas [23 CFR 450.324(e) and 23 CFR 450.216(a)(5)].

## Need for Flexibility

**This guidance is crafted to recognize that transportation financial planning and programming processes vary across the country. This document provides guidance and information (both conceptually and through some illustrative "current practice" examples) on demonstrating and determining fiscal constraint.**

FHWA and FTA realize it is difficult to predict project costs and revenues, especially in the outer years of the metropolitan long-range plan, so we provide a great deal of flexibility in demonstrating fiscal constraint. For example, in years when a Federal transportation authorization bill is not yet enacted, as is now the case, States, MPOs, and transit operators may project and assume Federal revenues for the out-years based on a trend line projection.

## Specific Statutory and Regulatory Requirements

The metropolitan planning statutes state that the long-range transportation plan and TIP must include a "financial plan" that "indicates resources from public and private sources that are reasonably expected to be available to carry out the program" [23 U.S.C. 134(g)(2)(B) and 134(h)(2)(B)(ii)]. Additionally, the STIP may include a similar financial plan [23 U.S.C. 135(f)(2)(E)]. The purpose of the financial plan is to demonstrate fiscal constraint. These requirements are implemented in our transportation planning regulations for the metropolitan long-range transportation plan, TIP, and STIP. These regulations provide, in essence, that a long-range transportation plan and TIP can include only projects for which funding "can reasonably

be expected to be available" [23 CFR 450.322(b)(11) (metropolitan long-range transportation plan), 23 CFR 450.324(e) (TIP), and 23 CFR 450.216(a)(5)(STIP)]. In addition, the regulations provide that projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are "available or committed" [23 CFR 450.324(e) and 23 CFR 450.216(a)(5)]. Finally, the Clean Air Act's transportation conformity regulations specify that a conformity determination can only be made on a fiscally constrained long-range transportation plan and TIP [40 CFR 93.108].

### **Basic Purpose of Fiscal Constraint**

The fiscal constraint requirement is intended to ensure that metropolitan long-range transportation plans, TIPs, and STIPs reflect realistic assumptions about future revenues, rather than being lists that include many more projects than could realistically be completed with available revenues. Given this basic purpose, compliance with the fiscal constraint requirement entails an analysis of revenues and costs. The basic question to be answered is

*"Will the revenues (Federal, State, local, and private) identified in the TIP, STIP, or metropolitan long-range transportation plan cover the anticipated costs of the projects included in this TIP, STIP, or metropolitan long-range transportation plan, along with operation and maintenance of the existing system?"*

If the projected revenues are sufficient to cover the costs, and the estimates of both revenues and costs are reasonable, then the fiscal constraint requirement has been satisfied.

### **Cooperative Revenue Estimates by State DOT, MPOs, and Transit Operators**

Importantly, for the purposes of developing the metropolitan long-range transportation plan and TIP, the MPO, State DOT, and transit agency must cooperatively develop estimates of funds that will be available to support plan and program implementation [23 U.S.C. 134 (g)(2)(B), 23 U.S.C. 134(h)(1)(8), 49 U.S.C. 5301(a)(1), 49 U.S.C. 5301(f)(1)(e), and 49 U.S.C. 5304 (a)(2)].

### **Special Requirement for Air Quality Nonattainment and Maintenance Areas: "Available or Committed" Funding for the First Two Years**

To support air quality planning under the 1990 Clean Air Act Amendments, a special requirement has been placed on air quality nonattainment and maintenance areas, as designated by the U. S. Environmental Protection Agency (EPA). Specifically, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are "available or committed" [23 CFR 450.324(e) and 23 CFR 450.216(a)(5)]. Additionally, EPA's transportation conformity regulations specify that an air quality conformity determination can only be made on a fiscally constrained long-range transportation plan and TIP [40 CFR 93.108]. Therefore, nonattainment and maintenance areas may not rely upon proposed new taxes or other new revenue sources for the first two years of the TIP and STIP. Thus, new funding from a proposed gas tax increase, a proposed regional sales tax, or a major funding increase still under debate would not qualify as "available or committed" until it has been enacted by legislation or referendum.

## **"Reasonably Available" Future Revenue**

In all other situations than the above, revenue forecasts for a long-range transportation plan, TIP, and STIP can take into account new funding sources that are "reasonably expected to be available." New funding sources are revenues that do not currently exist or that may require additional steps before the State DOT, MPO, or transit agency can commit such funding to transportation projects. As required in ISTEA, these planned new revenue sources must be clearly identified.

Future revenues may be projected based on historical trends, including consideration of past legislative or executive actions. The level of uncertainty in projections based on historical trends is generally greatest for revenues in the "outer years" of a metropolitan long-range transportation plan - - e.g., those beyond the first 10 years of the metropolitan long-range transportation plan. Additionally, for purposes of developing the financial plan to support the metropolitan long-range transportation plan, FHWA/FTA will accept the use of aggregate "cost ranges/cost bands" to define costs in the outer years of the long-range transportation plan, with the caveat that the future funding sources must be "reasonably available."

## **Changes in Revenues Occurring After the TIP/STIP/Metro Plan is Adopted**

In cases that FHWA and FTA find a long-range transportation plan or TIP/STIP to be fiscally constrained and the funds are subsequently removed (i.e., by legislative or administrative actions), FHWA and FTA will not withdraw the original determination of fiscal constraint. In such cases, FHWA and FTA will expect the state DOT or MPO to identify alternative sources of revenue as soon as possible. Importantly, FHWA/FTA will not act on new or amended TIPs, STIPs, or metro plans unless they reflect the changed revenue situation.

## **Changes in Costs Occurring after the TIP/STIP/Metro Plan is Adopted**

The same policy applies if project costs or operations/maintenance cost estimates change after a TIP, STIP, or metropolitan long-range transportation plan is adopted. Such a change in cost estimates does not invalidate the adopted transportation plan or program. However, the revised costs must be provided in new or amended TIPs, STIPs, and metropolitan long-range transportation plans. FHWA/FTA will not approve new or amended STIPs that are based on outdated or invalid cost estimates.

## **System Preservation, Operation, and Maintenance Costs**

ISTEA is clear that fiscal constraint encompasses operation and maintenance of the system, as well as capital projects. The financial plans that support the metropolitan and statewide transportation planning processes must assess capital investment and other measures necessary to ensure the preservation of the existing transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities. To support this assessment, FHWA and FTA expect that the State DOT, MPO, and transit agencies will provide credible cost estimates.

With respect to the regulatory requirement for fiscal constraint to provide for maintenance and operation of the existing system [23 CFR 450.322(b)(5) and 23 CFR 450.322(11)], FHWA and FTA largely defer to State and local governments as to what level of maintenance and operation is appropriate. FHWA and FTA do not mandate a particular, specific level of operations or maintenance. The Federal government accepts that State and local governments and MPOs will adjust the operation and maintenance from year to year and decade to decade, based on community desires and requirements established through an open transportation planning process.

Outside the transportation planning process, there also is a longstanding Federal requirement that States properly maintain, or cause to be maintained, any projects constructed under the Federal-aid Highway Program [23 U.S.C. 116]. However, beyond this basic requirement of proper maintenance, FHWA and FTA do not second-guess a State DOT's or MPO's decisions regarding uses of funding, nor would we question the priorities a State DOT or MPO has set with respect to maintenance and operation of the existing transportation system and construction of new projects. The FHWA and FTA simply assure that the process used by the MPO and State to establish priorities is consistent with the transportation planning statute and regulations, and that the MPO, transit agency, and State DOT are able to demonstrate reasonably available funding to meet the priorities it has identified. Consistent with regulations implementing the Clean Air Act, FHWA and FTA will also continue to assure that priority is given to the timely implementation of transportation control measures in the air quality State Implementation Plan [40 CFR 93.103, 40 CFR 93.116, and 23 CFR 450.324(g)].

## **Funding Gaps**

Substantial investments have been made in highway and transit infrastructure. The short- and long-term needs for system operation, preservation, and maintenance can be enormous. Simply maintaining the existing system in a state or large metropolitan area can demand billions of dollars in investments, while system expansion demands investments of a similar scale. At times, the combination of these competing demands can cause temporary shortfalls in a State's or MPO's budget. To the extent there appear to be shortfalls, the MPO or State DOT must identify a strategy to address these gaps in funding prior to the adoption of a new long-range transportation plan, TIP, or STIP - - or the amendment of an existing plan, TIP or STIP. The strategy should include a plan of action that describes the steps that will be taken to make funding available within the time frame shown in the financial plan needed to implement the projects in the long-range transportation plan. The strategy may rely upon the MPOs, transit operators, or States past record of obtaining funding. If it relies on new funding sources, the MPO, transit operator, or State must demonstrate that these funds are reasonably expected to be available.

All of the aforementioned and forthcoming information is intended to be shared with State DOTs, MPOs, and transit agencies. **Therefore, FHWA and FTA staff should work with the State DOTs, MPOs and transit agencies to assure they are aware of the details of this guidance.**